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No. 374

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

EDWARD J. SHAUGHNESSY, AS DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION FOR THE DISTRICT OF NEW YORK,

Petitioner,

VS.

MAMPRIL SEQUEIRA PEDREIRO.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR RESPONDENT

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BRIEF FOR RESPONDENT

Opinions Below

The opinion of the Court of Appeals (R. 8-11) is reported at 213 Fed. 2d, 768. The opinion of the District Court (R. 4-6) is unreported.

Jurisdiction

The judgment of the Court of Appeals was entered on July 1, 1954 (R. 11-12). The petition for a writ of certiorari was filed September 28, 1954, and was granted November 15, 1954 (R. 12). The jurisdiction of this Court rests on 28 U. S. C. 1254(1).

Questions Presented

1. Whether deportation orders issued under the Immigration and Nationality Act of 1952 may be challenged in the courts otherwise than by habeas corpus proceedings.

2. Whether the Commissioner of Immigration and Naturalization is an indispensable party to a court action other than a habeas corpus proceeding challenging a deportation order of the District Director of Immigration and Naturalization.

Statutes Involved

The pertinent portions of the Immigration and Nationality Act of 1952 (66 Stat. 208, 8 U. S. C. 1252) and of the Administrative Procedure Act (60 Stat. 243, 5 U. S. C. 1009) are set forth in the Appendix to the brief for petitioner (pp. 47-55).

Statement

The statement contained in the petitioner's brief is acceptable as a correct and adequate statement of the case.

Summary of Argument

It is the contention of respondent that when the Immigration and Nationality Act of 1952 (66 Stat. 208, 8 U. S. C. 1252) is read in the light of Section 10 of the Administrative Procedure Act, granting court review of administrative determinations, and in the further light of the remarks of the sponsors of the legislation in the Congressional debates, to the effect that such review, separate and apart from habeas corpus, was intended, an action such as the present one to review the determination of the administrative body here involved, properly lies.

It is the further contention of the respondent that the District Director, the person who, under the administrative regulations is charged with the duty of deporting respondent, is the sole requisite party respondent to the relief sought since the person sought to be deported obtains adequate remedy by injunctive relief against such District Director. *Williams* v. *Fanning,* 332 U. S. 490, 68 S. Ct. 188; *Hynes* v. *Grimes Packing Co.,* 337 U. S. 86, 69 S. Ct. 968; *Youngstown Sheet & Tube Co.* v. *Sawyer,* 103 F. Supp. 569, aff'd 197 F. 2d 582, 343 U. S. 579, 72 S. Ct. 863; *Stanford* v. *Lunde Arms Corp.,* 211 F. 2d 464.

ARGUMENT

I. The review of deportation orders by the courts is not limited to habeas corpus proceedings in cases which arise under the Immigration and Nationality Act of 1952.

The whole dispute under this point resolves itself down as to whether or not the following provisions of Section 10 of the Administrative Procedure Act (60 Stat. 243, 5 U. S. C. 1009) shall be applicable to deportation orders:

> "(A) Right of Review
>
> "Any persons suffering legal wrong because of any agency action, or adversely effected or grieved by such action within the meaning of any relative statute, shall be entitled to judicial review thereof."

Section 12 of the Administrative Procedure Act provides as follows:

> "No subsequent enacted legislation shall be held to supersede or modify the provisions of this Chapter *except to the extent that such legislation shall do so expressly.*" (Writer's emphasis.)

The Immigration and Nationality Act of 1952 was of course enacted subsequently to the Administrative Procedure Act, the latter having become law on June 11, 1946 (60 Stat. 237, 5 U. S. C. ¶ 1001).

The Government points to Section 242(b) of the Immigration and Nationality Act of 1952, wherein it is provided that in deportation cases "the decision of the Attorney General shall be final" and relies upon this language as expressly overruling the Administrative Procedure Act.

However, this Court has previously specifically decided that such words do not settle the question:

> "That the Attorney General's decisions are 'final' does not settle the question. The appellant properly emphasizes the ambiguity in that term. Read alone it might refer to the doctrine requiring exhaustion of administrative remedies before judicial process can be invoked" (*Heikkila* v. *Barber*, 345 U. S. 229, 233, 73 S. Ct. 603, 605).

In *Heikkila* v. *Barber*, supra, this Court decided what the word "final" meant when Congress enacted the Immigration Act of *1917*. At that time the philosophy embodied in the Administrative Procedure Act had not been conceived nor enacted and the sole remedy of a deportee subject to a deportation order was to resort to habeas corpus. Since Section 10 of the Administrative Procedure Act permitted review "except so far as (1) statutes preclude judicial review". The Court decided in *Heikkila* v. *Barber* that the *1917* statute intended to preclude review except in cases of habeas corpus.[1]

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[1] In a learned analysis of the Administrative Procedure Act by Bernard Schwartz, in Vol. 29, No. 6, New York University Law Review, June, 1954, the author takes even this decision severely to task:

> "The Court's decision in the Heikkila case appears to be as unsatisfactory as any which it has rendered in the field of administrative law in recent years. For the Court to hold that a provision for finality like that in the Immigration Act precludes review within the meaning of the introductory language

When the Immigration and Nationality Act of 1952 was passed, however, Congress had previously conceived of the philosophy embodied in the Administrative Procedure Act, and as this Court has previously stated "The House Report added that 'to preclude judicial review under this bill a statute, if not specific in withholding such review, must upon its face give clear and convincing evidence of an intent to withhold it. The mere failure to provide specially by statute for judicial review, is certainly no evidence of intent to withhold review'. The spirit of these statements, together with the broadly remedial purposes of the Act, counsel a judicial attitude of hospitality toward the claim that ¶ 10 greatly expanded the availability of judicial review" (*Heikkila* v. *Barber*, 345 U. S. 229, 232, 173 S. Ct. 603, 605).[2]

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at the beginning of Section 10 of the APA is for it to ignore both the background of provisions for administrative conclusiveness in our law and the actual facts with regard to the availability of review under the Immigration Act. The Court, as Mr. Justice Frankfurter said, in a strong dissenting opinion, 'gives the phrase "judicial review" in § 10 a technical content and thereby disregards the vital fact that although § 19 of the Immigration Act of 1917 * * * makes the decision of the Attorney General "final", they are not finally final.' As the hundreds of cases in the lower courts demonstrate, the Attorney General's actions are voluminously challenged and frequently set aside * * * the decisive fact is that the findings of the Attorney General are subject to challenge in the courts and from time to time are upset, whatever the formulas may be by which what he has finally done is undone'."

[2] The leading Supreme Court decision illustrating the judicial approach to statutory provisions for administrative finality is *Estep* v. *United States*, 327 U. S. 114 (1946). The statute there declared that the decisions of local draft boards were to be "final except where an appeal is authorized in accordance with such rules and regulations as the President may prescribe" (Selective Service Act, 54 Stat. 893 (1940), 50 U. S. C. Sec. 310 (1946)). Despite this provision, the Court held that a local board's induction order was not placed beyond judicial control. Mr. Justice Douglas emphasized the fact that the "statute * * * makes no provisions for judicial review" (*Estep* v. *United States*, 327 U. S. 114, 119 (1946)), and went on to state the usual rule in cases where the statute is silent on review, i.e., that legislative silence alone is not enough to bar review

Thus the question before this Court is not as in *Heikkila v. Barber*, whether an Act which preceded the Administrative Procedure Act, and which by the terms of the Administrative Procedure Act was intended to be preserved is to be interpreted. On the contrary. The question before this Court in this case is whether an Act which became law subsequent to the Administrative Procedure Act, and which by the very terms of the Administrative Procedure Act is to be subject to the requirements of that piece of legislation, unless expressly overruling it, contains sufficient language to overrule the Administrative Procedure Act.

We have seen that by the use of the word "final", Congress has used an ambiguous term and therefore, relying upon that word alone, one cannot say that Congress has *expressly* overruled the Administrative Procedure Act.

If the foregoing ambiguity however did require any resolution, we are fortunate in having available specific congressional debates dealing with the review aspects of the Immigration and Nationality Act. On April 24, 1952, during the House Debate on the Bill (HR 5678), Congressman Meader proposed an amendment to provision of paragraph 242 (b) that the Attorney General's decisions shall be final, to the effect that the order of deportation shall be subject to court review (98 Cong. Rec. 4415).

(*Estep v. United States*, 327 U. S. 114, 119 (1946)). The decision clearly stands for the proposition that, in the normal case, a provision for administrative finality does not mean that all judicial review is precluded. "It is only orders 'within their respective jurisdictions' that are made final" *Estep v. United States*, 327 U. S. 114, 120 (1946). Mr. Justice Douglas asserted in his *Estep* opinion and the jurisdictional question is a judicial question. To hold otherwise would be to impute an intent to the legislature to depart drastically from our normal tradition of judicial control of legality, in a case where the legislative intent has not been expressed unequivocally. "We cannot readily infer that Congress departed so far from the traditional concepts of a fair trial when it made the actions of the local boards 'final' * * *" (*Estep v. United States*, 327 U. S. 114, 122 (1946)).

Congressman Walter, co-author of the bill, and the Administrative Procedure Act, opposed this amendment as surplusage and stated clearly that § 10 of the Administrative Procedure Act is applicable. Said he (p. 4416):

> "Now we come to this question of finality of the decision of the Attorney General. That language means that it is a final decision as far as the administrative branch of the government is concerned, but it is not final in that it is not the last remedy that the alien has. Section 10 of the Administrative Procedure Act is applicable."

Petitioner's brief seeks to vitiate this statement upon the ground that "not all the statements made in the course of this one unprepared speech are entirely accurate and they cannot be relied upon as an authoritative interpretation of the statute" (brief, petitioner, p. 23).

Representative Walter was, however, the co-author of the Immigration and Nationality Act of 1952 and the Administrative Procedure Act, and a member of the bar. But, even it be assumed arguendo that he was not accurately interpreting this bill, an assumption which respondent refuses to concede, the fact remains that he *was* interpreting the bill for the entire House of Representatives, and his statements concerning the effect of the bill are operative facts in determining the intention of the House in passing the bill, unless the language of a particular provision is so clear that it cannot be interpreted more than one way (which is not the case here).

In the *Senate* debate, Senator McCarran said on May 22nd, 1952 (98 Cong. Rec. 5778):

> "The Administrative Procedure Act is made applicable to the bill. The Administrative Procedure Act prevails now."

Thus, the Congressional debates reveal that by its use of the word "final", Congress did not intend to expressly overrule the Administrative Procedure Act, but, to the

contrary, seems to have had every intention of preserving the review provisions thereof.

Congress' treatment of predecessor bills reveal no different intention:

After this Court's decision in *Sung* v. *McGrath*, 339 U. S. 33 (1950), holding that deportation proceedings under the *1917* Act were subject to the *procedural* requirements (as distinguished from review) of the Administrative Procedure Act, the Immigration Service instituted efforts to secure full exemption from the Examiner *and review* provisions of the Administrative Procedure Act.

H.R. 6652, 80th Congress, 2d Session, sought to relieve the Immigration Service from all provisions of the Administrative Procedure Act, except the public information section. The House Judicial Committee took specific note of the *Trinler* v. *Carusi* decision, 166 F. 2d 457, holding that deportation proceedings under the *1917* Act were *also* subject *to review* under the Administrative Procedure Act. (This was before this Court's decision in *Heikkila* v. *Barber*, supra, holding that such proceedings under the 1917 Act were *not* subject to review under the Administrative Procedure Act.) (House Report 2140, 80th Congress, 2d Session, pp. 2, 6.) The bill, however, failed of passage.

Efforts continued to secure exemption from the examiner *and review* provisions of the Administrative Procedure Act, with the introduction of the so-called Hobbs Bill in the 81st Congress, 1st Session (H.R. 10), which sought to grant specific exemption from Section 10 of the Administrative Procedure Act and the Declaratory Judgment Act (H.R. 1192, 81st Congress, 1st Session, p. 4). In his recommendation for favorable action on this Hobbs Bill, Mr. Justice Clark, who was then Attorney General, assumed that declaratory judgment and review under the Administrative Procedure Act *was* then available in immigration cases. In a letter of May 20, 1949, the then Attorney General states (H.R. 1192, p. 13):

"Section 5 would enumerate certain circumstances under which provisions of the Administrative Procedure Act and the Declaratory Judgment Act of 1934 shall not be applicable to certain immigration and nationality statutes * * *."

This bill, too, failed of enactment.

Efforts to confine judicial review exclusively to habeas corpus by express language was made in Section 6 of still another bill, to wit, S. 1832 (Senate Report 2230), 81st Congress, 2d Session. The text of this section was later reintroduced as Section 106 of the first Senate version of the Immigration and Nationality Act of 1952 (S. 3455, 81st Congress, 2d Session).

On April 20, 1950, Senator McCarran introduced an omnibus bill, which was later, as revised, to become the Immigration and Nationality Act of 1952. This was S. 3455, 81st Congress, 2d Session, which expressly provided in Section 106 that determinations of fact should not be subject to review by any court and that determinations of law should not be subject to review by any court except through the writ of habeas corpus.[3] Similar provisions were contained in a revised bill, S. 716, introduced by Senator McCarran on January 29, 1951 (82nd Congress, 1st Session), and in H. R. 2379, introduced by Congressman Francis Walter on February 5, 1951 (82nd Congress, 1st Session).[4]

[3] "Sec. 106. Notwithstanding the provisions of any other law—

(a) determinations of fact by administrative officers under the provisions of this Act or regulations issued thereunder shall not be subject to review by any court;

(b) determinations of law by administrative officers under the provisions of this Act or regulations issued thereunder shall not be subject to review by any court except through the writ of habeas corpus; and

(c) the exercise of discretionary authority conferred upon administrative officers by this Act or regulations issued thereunder shall not be subject to review by any court."

[4] Section 106 of S. 716 and H. R. 2379 provided:

"Sec. 106(a). Notwithstanding the provisions of any other law—

(1) determinations of fact by administrative officers under the

The Government (brief, p. 15) relies on the statement that Senate Report No. 1515 (81st Congress, 2d Session, p. 629) submitted on April 20, 1950, when S. 3455, supra, was introduced, to the effect that "Habeas Corpus is the proper remedy to determine the legality of the detention of an alien in the custody of the Immigration and Naturalization Service." This statement that habeas corpus is the proper remedy to determine the legality of the detention of an alien in custody is not the equivalent, as the Government claims, of a statement that habeas corpus is the *exclusive* remedy for the review of a deportation order in respect of an alien not in custody. Obviously if an alien is *in custody* habeas corpus is a remedy to determine the legality of the detention, as in *Carlson* v. *Landon*, 342 U. S. 524 (1952), but that is quite a separate matter from judicial review of the legality of a deportation proceeding and the deportation order. Moreover, even if S. Rep. 1515 meant what the Government says it means it would merely reflect approval of Section 106 of S. 3455, barring review except by habeas corpus. This section, however, as will be seen below, was later *eliminated* from the bill and from the 1952 Act.

Joint hearings were held on these three bills and representatives of numerous organizations recorded their opposition to the provisions restricting judicial review and urged the continued application of Section 10 of the Administra-

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provisions of this Act or regulations issued thereunder shall not be subject to review by any court;

(2) determinations of law other than with respect to liability for the payment of deportation, detention, and related expenses by vessels, aircraft, or other transportation lines, or the master, commanding officer, owner, agent, or consignee thereof, or the imposition of fines and penalties by administrative officers under the provisions of this Act or regulations issued thereunder shall not be subject to review by any court except through the writ of habeas corpus; and

(3) the exercise of discretionary authority conferred upon administrative officers by this Act or regulations issued thereunder shall not be subject to review by any court.

(b) Nothing in subsection (a) of this section shall be held to apply to court proceedings instituted under section 360 of this Act."

tive Procedure Act. These organizations included representatives of the American Bar Association, American Civil Liberties Union, Americans for Democratic Action, American Jewish Committee, Association of Immigration and Nationality Lawyers, Common Council for American Unity, and National Catholic Welfare Conference.[5] Joint Hearings Before the Sub-Committees of the Committees on the Judiciary on S. 716, H. R. 2379, H. R. 2816, pp. 144, 146, 536-7, 591, 617, 699, 735, 739. It was understood that elimination of Section 106 would leave Section 10 of the Administrative Procedure Act applicable.

The revised omnibus bills introduced later in the 82nd Congress, 1st Session (S. 2055, introduced by Senator McCarran on August 27, 1951, and H. R. 5678, introduced by Congressman Walter on October 9, 1951), and a subsequent revised omnibus bill introduced in the 82nd Congress, 2nd Session (S. 2550, introduced by Senator McCarran on January 29, 1952), eliminated Section 106 of the prior bills and neither the prior Section 106 nor its provisions appear in the 1952 Act. This elimination of Section 106, in the light of the Joint Hearings, discloses the clear intent to continue judicial review under the Administrative Procedure Act as it was then practiced and understood.

S. 2842 (82nd Cong., 2nd Sess.) introduced on March 12, 1952, by Senator Humphrey for himself and twelve other Senators, was an omnibus bill differing in several respects

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[5] The representative of the American Bar Association (Mr. Wasserman) stated (pp. 536-7):

"We believe that determinations of immigration and naturalization matters as well as citizenship matters should be subject to judicial review provided by Section 10 of the Administrative Procedure Act."

The statement on behalf of the National Catholic Welfare Conference states (p. 735):

"4. Section 106: It is our conviction that administrative decisions should not necessarily be final; rather that immigration and naturalization cases have the benefit of review by the courts as presently applies under the Administrative Procedure Act."

from the McCarran and Walter bills but similar in the respect that it did not contain the eliminated provisions for the restriction of judicial review in former Section 106.[6]

The report of the Committee on the Judiciary (Report No. 1137, 82nd Congress, 2nd Session) submitted to the Senate on January 29, 1952, on S. 2055, explained that the elimination of the provisions contained in Section 106 of the former bills was (p. 28): "not intended to grant any review of determination made by consular officers, nor to expand judicial review in immigration cases beyond that under existing law." But it is very important to clearly observe what the existing law was at the time of the issuance of the Senate Report. The Administrative Procedure Act had been interpreted in 1948, 1949 and in 1950 by *Trinler* v. *Carusi* (1948), 166 F. 2d 457; *Podovinikoff* v. *Miller*, 179 F. 2d 937 (1950); *Kristensen* v. *McGrath*, 179 F. 2d 796, aff'd in *McGrath* v. *Kristensen*, 340 U. S. 162, 71 S. Ct. 224 (1950), and *Prince* v. *Commissioner*, 185 F. 2d 578 (1950). In *all* of these cases it had been held that deportation orders were subject to review under the provisions of Par. 10 of the Administrative Procedure Act.[7] The opinion of this Court in *Heikkila* v. *Barber*, supra, decided in 1953, had not yet been handed down.

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[6] Note should be made that when the Immigration Service finally secured an exemption from the Administrative Procedure Act in the 1951 Supplemental Appropriations Act (P. L. 843) (81st Cong., 64 Stat. 1048), such exemption was limited to Sections 5, 7 and 8 of the Administrative Procedure Act (which sections deal with procedure). It did *not* exempt deportation orders from the applicability of Section 10 of the Administrative Procedure Act dealing with court review.

[7] "While it might look as though judicial review were precluded by the giving to the deportation order the air of finality, in practice such finality never existed because of the availability of habeas corpus. The fact that review has been judge-made out of the concept of due process does not make it any less a qualification of the statute than if the legislators had put the provisions in it when the statute was first drawn" (*United States ex rel. Trinler* v. *Carusi*, 166 F. 2d 457, 461 (3d Cir. 1948).

In addition to the foregoing, the Court in *Rabinstein* v. *Brownell*, 206 F. 2d 449, found three additional pieces of evidence within the Immigration and Nationality Act of 1952 itself which would indicate that judicial review of a final order of importation was intended by Congress. They were as follows:

1. "The 1952 Act and its historical background. Unlike the 1917 Act, Sec. 242(b)(4) of the 1952 Act provides that 'no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence'" (p. 452).
2. "Unlike the 1917 Act, Sections 242(c) and 242(e) of the 1952 Act expressly recognize that there may be 'judicial review' of a final order of deportation. Section 242(c) provides that 'the Attorney General shall have a period of six months from the date of such order, *or, if judicial review is had, then from the date of the final order of the court*, within which to effect the alien's departure from the United States * * *.'" (Court's emphasis.)

   'Judicial review' is not synonymous with habeas corpus.[7] Nothing in Section 242(c) restricts it to habeas corpus" (p. 452).
3. "Section 360(c) of the 1952 Act itself provides, as to persons seeking admission to the United States, that 'A final determination by the Attorney General that any such person is not entitled to admission to the United States shall be subject to review by any court of competent jurisdiction *in habeas corpus proceedings and not otherwise*.'[13] The fact that Congress said clearly what it meant in Section 360(c) with regard to admission is strong evidence that it did not mean that it did not say in Section 242(c) with regard to deportation[14]" (p. 453).

"[7] The Supreme Court said in the Heikkila case: 'it is the scope of inquiry on habeas corpus that it differentiates use of the writ from judicial review as that term is used in the Administrative Procedure Act.' 345 U. S. at page 236, 73 S. Ct. at page 607."

"[13] Emphasis added."

"[14] Section 242(c) provides that 'Any court of competent jurisdiction shall have authority to review or revise any deter-

The following additional considerations affect the determination of the issues in the case at bar.

The passage of the Administrative Procedure Act was widely heralded as marking the beginning of a new era in our administrative law.[8] The Administrative Procedure Act, said its sponsor, "is a bill of rights for hundreds of thousands of Americans whose affairs are controlled or regulated in one way or another by agencies of the Federal Government."[9] The Act was hailed as "the most important statute affecting the administration of justice in the federal field since the passage of the Judiciary Act of 1789."[10]

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mination of the Attorney General *concerning detention, release on bond, or other release during such six-month period upon a conclusive showing in habeas corpus proceedings* that the Attorney General is not proceeding with such reasonable dispatch as may be warranted by the particular facts and circumstances in the case of any alien to effect such alien's departure from the United States within such six-month period.' (Emphasis added.)

"As the Second Circuit has held regarding practically the same language in Section 242(a), this sentence 'provides but an added statutory recognition of a basis for judicial review, not a limitation upon the power * * *.' United States ex rel. Yaris v. Esperdy, 202 F. 2d, 109, 112. (1) Read literally the sentence grants, and does not withdraw or restrict, authority to review. (2) It does not touch the subject of review, in habeas corpus or otherwise, of deportation orders, but relates only to review of 'detention, release on bond, or other release' when the Attorney General is not proceeding with 'reasonable dispatch' to effect a deportation. (3) The six-month period referred to, during which this sentence authorizes review of these matters, begins to run only after 'a final order of deportation * * * or, if judicial review is had, then from the date of the final order of the court * * *.' (4) So far if at all as the sentence in question may imply that the matters to which it refers, during the time to which it refers, may be reviewed only in habeas corpus, it implies that review of other matters and review at other times are not so limited."

[8] Vanderbilt, The Doctrine of the Separation of Powers and its Present Day Significance 88 (1953).

[9] Administrative Procedure Act, Legislative History, Sen. Doc. #248, 79 Cong. 2d Sess. 311 (1946).

[10] Vanderbilt, The Federal Administrative Procedure Act and the Administrative Agencies (1947).

For these reasons this Court, in *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, indicated that it would give a broadly remedial interpretation to the Act, noting that "any exception we may find to its applicability would tend to defeat this purpose" (p. 41), and in *Heikkila* v. *Barber*, 345 U. S. 229, 232, stated that it would maintain "a judicial attitude of hospitality toward the claim that paragraph 10 greatly expanded the availability of judicial review."

Practical considerations, as well are important. In reality, the question of the availability of review under the Administrative Procedure Act is of great consequence to an alien against whom a deportation order is issued. Prior to the Administrative Procedure Act, review in such cases could be obtained only by means of habeas corpus. Before the writ could be issued, it was necessary for the alien to be in the custody of the Attorney General. "The person about to be deported was thus in a position where he was required by the order of the Attorney General to wind up his affairs, to bid last farewell to his family and friends and to submit himself to physical deportation before he could seek any relief or any review of what the Attorney General had determined were his rights under the immigration laws of the United States" (*Orlow, Deportation Under the Administrative Procedure Act of 1946*, 22 Temp. L. Q. 74, 77 (1948)). If Section 10 of the Administrative Procedure Act were applicable, the alien could avoid having to be placed in this undesirable position before being able to obtain judicial relief.

> "The point is legally narrow but practically important. It means that one against whom a deportation order is outstanding but not executed may at once move, by means of a declaratory judgment, to challenge the administrative process insofar as the substantive law pertaining to deportation permits challenge."[11]

[11] *Heikkila* v. *Barber*, 345 U. S. 229, 240 (1953). The Department of Justice itself has, since this case, proposed legislation to

Thus, the statute itself, the legislative history, the broad policies of the Administrative Procedure Act, the avowed intentions of this Court to carry out these policies and the practical considerations involved, all militate toward one conclusion: Deportation orders issued under the Immigration and Nationality Act of 1952 are subject to review by court action under Par. 10 of the Administrative Procedure Act.

II. The District Director of Immigration is the proper party respondent and no other party need be joined in a court action to review a deportation order pursuant to Section 10 of the Administrative Procedure Act.

The opinions of this Court in three cases decided by it, support the contention of the respondent:

Williams v. *Fanning*, 332 U. S. 490, 68 S. Ct. 188;
Hynes v. *Grimes Packing Co.*, 337 U. S. 86, 69 S. Ct. 968;
Youngstown Sheet & Tube Co. v. *Sawyer*, 103 Fed. Supp. 569, aff'd 197 F. 2d 582, 343 U. S. 579.

These decisions can only lead to one logical result in cases involving petitions for review from deportation orders. This result was reached in *Ragni* v. *Butterfield*, 115 Fed. Supp. 953, U. S. D. E. D. Mich. (1953), by Judge Picard, who, in the following well-reasoned analysis, held that the Attorney General was not an indispensable party:

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make deportation orders subject to judicial review as soon as they are administratively final, so that aliens need not wait until they are in custody before being able to challenge such orders in the courts. In letters addressed to the Speaker of the House and the Vice President, dated March 10, 1954, the Attorney General asked for the introduction of bills giving effect to this proposal. It was also approved in a resolution adopted by the House of Delegates of the American Bar Association on March 9, 1954. See 22 U. S. L. Week 2434 (March 16, 1954).

"Primarily, we held, that to require a litigant to travel thousands of miles to prosecute a legal claim is not only unjust and highly inequitable but virtually a denial of the right to bring suit. We are not unmindful of the fact that other courts have held to the contrary.

* * * * * *

"In practically all the cases decided on the basis of Williams v. Fanning, supra, in which the immigration officer or the Attorney General were held to be indispensable parties, the rationale seems to center on the theory that if one district court should cancel the order of deportation where the superior officer has not been made a party, and the plaintiff should move to another district and be taken into custody by the District Director there, the first court's order would not bar the latter from deporting plaintiff as the second District Director was not a party before the first district court. But the supreme court in Williams v. Fanning, supra, very pointedly said:

> '* * * if the decree which is entered will effectively grant the relief desired by expending itself on the subordinate officer who is before the court'

the superior is not indispensable.

"With that in mind, we are moved to inquire who is the best judge of what remedy the plaintiff desires, the plaintiff himself or the government? It appears to this court that such authorities holding that the Attorney General or the Director of Immigration are necessary parties are in the position of telling the plaintiff what he ought to have if he is going to protect himself, rather than what his rights may be. We find ourselves faced, therefore, with the unusual situation that defendant government is concerned about the efficacy of plaintiff's remedy.

"If the petitioner, rather than incur the expense and inconvenience of traveling to the District of Columbia, is content to seek the limited relief that a district court can afford him under the present law, it is our opinion that we should not deny him that relief simply because we cannot give him immunity from further prosecution

in some other district to which he may never go or through which he may never pass.

"Such conclusion, we believe, would be in harmony with, and a more rational construction of, the ruling in Williams v. Fanning, supra, and Hynes v. Grimes Packing Co., 337 U. S. 86, 69 S. Ct. 968, 93 L. Ed. 1231."

The reasoning was carried even further in the recent case of *Stanford* v. *Lunde Arms Corp.*, 211 F. 2d 464, where, in issuing an injunction against a local postmaster, the Court said:

"We are not disposed to assume, as appellant suggests may be the case, that the postmasters elsewhere will ignore the court's decision and decline to deliver the product when it reaches them." [12]

Judge Picard might well have additionally referred to the new rules and regulations promulgated by the Attorney General on December 17, 1952, which regulations specifically delegate to the District Director the power to carry out the Attorney General's authority to deport an alien who has exhausted his administrative remedies. These regulations are as follows:

"Part 243—Deportation of Aliens in the United States.

Sec. 241.1 *Issuance of warrants of deportation; country to which alien shall be deported; cost of detention; care and attention of alien*—(a) Issuance. In any case in which an order of deportation becomes final a warrant of deportation shall be issued. District directors shall issue warrants of deportation.

(b) *Determination of place and cost of deportation, and necessity for attendants.* District directors shall

[12] See *Williams* v. *Fanning revisited*, 54 Col. L. Rev. 1128, 1138 ft. 45: "It is submitted that the reasoning of those cases which refuse to enjoin the enforcement of a deportation order is weak for this is the relief petitioner believes will be effective and stare decisis makes the first determination, if not binding, at least persuasive in another district. The reasoning is baseless if res adjudicata is applicable to subsequent proceedings."

exercise the authority contained in section 243 of the Immigration and Nationality Act to designate the country to which, and at whose expense an alien in the United States shall be deported, and to determine when an alien's mental or physical condition requires the employment of a person to accompany the alien.

Sec. 243.2 *Finality of decision.* No appeal shall lie from the decision of the district director in the exercise of the authority described in Sec. 243.1."

Section 243 of the Immigration and Nationality Act, 8 USCA, par. 1253, is the section which authorizes the Attorney General to carry out the deportation of an alien who has been determined to be deportable pursuant to the administrative hearings accordable to him pursuant to the Immigration and Nationality Act. As can be seen the Attorney General has, pursuant to the foregoing rules, delegated this authority specifically to the District Director in charge of the district in which the alien resides. This authority is in accordance with Section 103 of the Immigration and Nationality Act (8 USCA, par. 1103) which states that the Attorney General is authority to "appoint such employees of the Service as he deems necessary and to delegate to them or to any officer or employee of the Department of Justice in his discretion any of the duties and powers imposed upon him in this chapter."

Since, therefore, effective relief can be granted against the District Director of Immigration and Naturalization, he is the only necessary party defendant.

CONCLUSION

Deportation orders under the Immigration and Nationality Act of 1952 may be challenged under Section 10 of the Administrative Procedure Act and the District Director of Immigration and Naturalization is the only necessary party defendant.

Respectfully submitted,

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